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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KATHLEEN A. OVERS,

12 Plaintiff,

13 vs.

14 MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

15 Defendant.

CASE NO. 11cv0507 WQH (RBB)

ORDER

16 HAYES, Judge:

17 The matter before the Court is the Report and Recommendation (ECF No. 12) issued
18 by United States Magistrate Judge Ruben B. Brooks recommending that Plaintiff's Motion for
19 Summary Judgment (ECF No. 8) be granted in part and denied in part, and that the matter be
20 remanded for further proceedings.

21 **BACKGROUND**

22 On March 16, 2007, Plaintiff Kathleen A. Overs applied for Social Security Disability
23 Insurance Benefits, alleging disability beginning on January 17, 2007. (Administrative Record
24 ("AR") 14; ECF No. 6-2 at 15). Plaintiff's application was denied initially and on
25 reconsideration. *Id.*

26 On April 29, 2009, a hearing was held before an administrative law judge ("ALJ").
27 (AR 24; ECF No. 6-2 at 25). On May 13, 2009, the ALJ issued a written decision finding that
28 Plaintiff was not entitled to disability insurance benefits. (AR 11-23; ECF No. 6-2 at 12-24).
On January 10, 2011, the Appeals Council denied Plaintiff's request for review. (AR 1-5; ECF

1 No. 6-2 at 2-6).

2 On March 14, 2011, Plaintiff initiated this action against Defendant Michael J. Astrue,
3 Commissioner of the Social Security Administration, pursuant to 42 U.S.C. § 405(g). (ECF
4 No. 1). On January 30, 2012, Plaintiff filed a Motion for Summary Judgment, asking the Court
5 to reverse the Commissioner's final decision and to remand the case for an award of benefits
6 or further proceedings. (ECF No. 8). On February 23, 2012, Defendant filed an Opposition
7 to Plaintiff's Motion for Summary Judgment and a Motion for Remand to the Social Security
8 Administration. (ECF No. 9).

9 On July 16, 2012, Magistrate Judge Ruben R. Brooks issued the Report and
10 Recommendation recommending that the Court (1) grant Plaintiff's Motion for Summary
11 Judgment in part and remand for further proceedings, (2) deny Plaintiff's Motion for Summary
12 Judgment in part and not remand for award of benefits, and (3) grant Defendant's Motion for
13 Remand to the Social Security Administration for further proceedings. (ECF No. 12).

14 Neither party filed objections to the Report and Recommendation.

15 STANDARD OF REVIEW

16 The duties of the district court in connection with a Report and Recommendation of a
17 Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
18 U.S.C. § 636(b)(1). A district court may "accept, reject, or modify, in whole or in part, the
19 findings or recommendations made by the magistrate judge." Fed. R. Civ. P. 72(b); 28 U.S.C.
20 § 636(b)(1). When no objections are filed, the district court need not review the Report and
21 Recommendation de novo. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005);
22 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).

23 A court "will disturb the denial of benefits only if the decision contains legal error or
24 is not supported by substantial evidence." *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir.
25 2008) (quotation omitted). "Substantial evidence is such relevant evidence as a reasonable
26 mind might accept as adequate to support a conclusion. The evidence must be more than a
27 mere scintilla but not necessarily a preponderance." *Id.* (quotations omitted).

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DISCUSSION

The Court has reviewed the Report and Recommendation, the written opinion of the ALJ, the administrative record, and the submissions of the parties.

The Court concludes that the Magistrate Judge correctly recommended that Plaintiff's Motion for Summary Judgment be granted in part and denied in part. The Court finds that the Magistrate Judge correctly concluded that "[i]n light of Judge Trembley's [sic] failure to articulate specific and legitimate reasons for rejecting Dr. Nester's opinion ... the matter should be remanded to allow Judge Trembley to explain his reasons for doing so." (ECF No. 12 at 15) (citing *Strauss v. Comm'r of Soc. Sec. Admin.*, 635 F.3d 1135, 1138).

The Magistrate Judge's Report and Recommendation (ECF No. 12) is adopted in its entirety, except for the sentence on page 12, lines 24-26, which is modified as follows: "**Plaintiff contends that** because the treating physician's opinion was not adequately rejected, it should be accepted as a matter of law and the case should be remanded for an award of benefits." (*Id.* at 12).

CONCLUSION

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (ECF No. 12) is adopted in its entirety, except for the sentence on page 12, lines 24-26, which is modified in accordance with this order. Plaintiff's Motion for Summary Judgment (ECF No. 8) is GRANTED in part and DENIED in part. Defendant's Motion for Remand (ECF No. 9) is GRANTED. The Court REMANDS this case to the Social Security Administration for further administrative proceedings consistent with the Report and Recommendation.

DATED: 8/29/12


WILLIAM Q. HAYES
United States District Judge